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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/550,742 | 09/22/2005 | Clare Hill | 112701-658 | 6069 |
| 29157 7590 02/04/2009 BELL, BOYD & LLOYD LLP P.O. Box 1135 CHICAGO, IL 60690 | | | | |
| EXAMINER | | | | |
| BEKKER, KELLY JO | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 1794 | | | | |
| NOTIFICATION DATE | | DELIVERY MODE | | |
| 02/04/2009 | | ELECTRONIC | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATENTS@BELLBOYD.COM

Office Action Summary

Application No.

10/550,742

Applicant(s)

HILL ET AL.

Examiner

Kelly Bekker

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 32-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CICE)
Paper No(s)/Mail Date 11/3/06 & 6/14/06
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION
Election/Restrictions

Applicant's election without traverse of Group I, claims 1-31 in the reply filed on December 15, 2008 is acknowledged. Claims 32-34 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 17, 18, and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 17 recites, "the liquid center is a fat based composition". It is unclear as to what the term "fat base composition" requires; it is unclear as to if the composition only need contain fat or whether the composition need contain a certain amount of fat, such as greater than 50% fat.

Claim 24 recites a claimed viscosity, however, does not provide the parameters with which the viscosity was measured. For example, it is unclear as to what temperature the viscosity was measured at. The claims are indefinite as viscosity is affected by measuring parameters and it is unclear as to what parameters were present to measure the claimed viscosity.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (WO 02/30213 A1) in view of the combination of Gennadios (US 6214376 B1) and Lennox (Gelatin Alternatives in Gummi Confections).

Jones teaches of a gummy food product comprising a gelled, gelatin free, water based shell and liquid center (abstract and page 2 lines 22-29). Jones teaches that the shell comprises 0.5-5%, preferably 1-4% hydrocolloid, including carrageenan when the shell thickness is 2-10mm (page 2 line 31 through page 3 line 1). Jones teaches that the shell comprises 3-50%, most preferably 10-20% water and 50-97%, most preferably 75-85% solids including sugar (page 3 lines 1-10). Jones teaches that the shell may also include small amounts of acids, buffers, and colorants (page 3 lines 6-7). As Jones that the shell contains sugar and water as main ingredients with other optional ingredients and as Jones teaches that the shell has a water content of 3-50%, most preferably 10-20% water, one of ordinary skill in the art at the time the invention was made would expect that the shell as taught by Jones contain about 50-97%, most preferably about 75-85% sugars. Jonas teaches that the liquid center may contain water, sugars, oil/fat, color, flavor, acid, minerals, vitamins, herbs (page 3 lines 15-21). Since Jones teaches that the center may contain fat, Jones teaches that the center may be fat based. Jones teaches that the solids content of the liquid center is 50-90%, most preferably 75-80% (page 3 lines 33-35), and thus the liquid content is 10-50%, most preferably 20-25%. As Jones that the liquid center may contain sugar and water with other optional ingredients and as Jones teaches that the liquid center has a water content of 10-50%, most preferably 20-25%, one of ordinary skill in the art at the time the invention was made would expect that the liquid center as taught by Jones contain about 50-90%, preferably 75-80% sugars. Jones teaches that the viscosity of the liquid center is from 0.0089-159Pas at 25C (page 3 lines 19-21). Jones teaches that the food product contains 10-90%, preferably 25-75% of the shell and 10-90%, preferably 25-75% of the liquid filling (page 4 lines 1-2). Jonas teaches that the casing may be substantially transparent or opaque (page 2 line 10).

Jones is silent to the type of carrageenan used in the shell and to the ratio of kappa and iota carrageenan used in the shell as recited in claims 1, 5, and 6, to the liquid center as including a flavored oil or chocolate as recited in claim 18, and to the optical density of the shell as recited in claims 15 and 16.

Gennadios teaches in gelatin free capsules for oral administration 0.5-12% kappa carrageenan is included in the shell composition (abstract). Gennadios teaches that in gelatin free capsules it was known to combine kappa and iota carrageenan (Column 3 lines 24-31). Gennadios teaches that 50% or 25% kappa carrageenan may be substituted by iota carrageenan in order to form a softer more elastic gel (Column 4 lines 14-20).

Lennox teaches that in gummi confections it is desirable for gelatin to be substituted with mixtures of kappa and iota carrageenan (pages 65 and 66 Introduction and page 71 Conclusions and Recommendations paragraph 2). Lennox teaches that the ratio of kappa to iota carrageenan includes about 53-82% kappa carrageenan to about 18-47% iota carrageenan (Figure 3 Run Numbers 6 and 10). Lennox teaches that the ratio of kappa to iota carrageenan alters the hardness, springiness, resilience, chewiness, gumminess, cohesiveness, hardness, stickiness, color, wetness, ect (Figures 4-7).

Regarding the type of carrageenan used in the shell and ratio of kappa to iota carrageen in the shell, it would have been obvious to use iota and kappa carrageen as the carrageen in the shell taught by Jones since, as admitted by applicant, specification page 1 line 32, only kappa and iota carrageenan have gelling properties. It would have been further obvious to one of ordinary skill in the art at the time the invention was made to use 50-75% kappa carrageenan and 25-50% iota carrageenan in the shell in order to form a shell which was softer and more elastic as taught by Gennadios. Furthermore, as taught by Lennox, to alter the ratio of kappa and iota carrageenan in the gummy products, such as the one taught by Jones depending on the desired properties of the final product, including hardness, springiness, resilience, chewiness, gumminess, cohesiveness, hardness, stickiness, color, and wetness was well known

and would not impart a patentable distinction to the claims absent any clear and convincing arguments and/or evidence to the contrary.

Regarding the liquid center as including a flavored oil or chocolate, Jones teaches that the liquid center may contain oil/fat as well as flavorings. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include flavor oil or solid flavors in the liquid center depending on the flavor desired in the final center filled composition. To use well known flavorants, such as flavor oils and/or chocolate, for their known purpose would have been obvious and common sense to one of ordinary skill in the art at the time the invention was made and would not impart a patentable distinction to the claims absent any clear and convincing arguments and/or evidence to the contrary.

Regarding the optical density of the shell, Jones teaches that the shell is transparent or opaque, thus one of ordinary skill in the art at the time the invention was made would expect the shell as taught by Jonas to encompass the optical density claimed. Furthermore, since Lenox teaches that hydrocolloids affect the clarity of gummy products and since the references of record teach of a gummy product with substantially the same composition, including the same hydrocolloids within the instantly claimed ranges and proportions, one of ordinary skill in the art at the time the invention was made would expect that the gummy product taught by the references of record have substantially the same properties, including optical density, as the instantly claimed shell. Regardless, as taught by Lenox, it would have been obvious to one of ordinary skill in the art at the time the invention was made to alter the ingredients of the product depending on the desired properties of the shell, including optical density. One would have been motivated to have a more clear shell if it was desirable for the consumer to see the filling within the shell and a less clear shell if it was not desirable for the consumer to see the filling within the shell.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Bekker whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on (571) 272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lien Tran/
Primary Examiner
Art Unit 1794

/Kelly Bekker/
Examiner
Art Unit 1794